[*55] *Aksu v. turkey*, No. 4149/04 41029/04 [GC], 03.15.2012.
[*56] *Cox v. turkey*, No. 2933/03, 20.5.2010.
[*57] *Lombardi Vallauri v. italy*, No. 39128/05, 20.10.2009.
[*58] *Fernández Martínez v. spain*, No. 56030/07 [GC], 06.12.2014.
[*59] *Perinçek v. switzerland*, No. 27510 [GC], 10.15.2015.
[*60] *Gillberg v. sweden*, No. 41723/06 [GC], 3.4.2012.
[*61] *Tarantino and Others v. Italy*,no.25851 / 09 29284/09 64090/09, 02.04.2013.
[*62] *Pope Francis* : Address to European Parliament - full text, Vatican Radio, November 25 2014 link (05.01.2017).
[*63] *Le bon juge devrait unir l'esprit philosophique à la simple bonté* , Citation d'Anatole France; Opinions sociales - 1902nd

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The applied in the General Government in 1939-1945 substantive criminal law

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Abstract

In summary, I would say that is that the legislation formed by the German occupation authorities for the General Government in 1939-1945 in the area of substantive criminal law was one of the most essential elements of repression and Exterminationspolitik. In my opinion, introduced in the General Government of various organs of the Nazi Third Reich German substantive criminal laws were particularly severe. As an example, let me again remind here of the death penalty for the Jews, if they are not relocated to ghettos or left their limitations, which affected all the other people who gave them refuge and especially when they brought the Jews out of the ghetto borders, they fed or hidden.

After the end of hostilities in October 1939, Germany has made a division of the occupied territories of the Polish state. The northern and eastern regions (including Greater Poland, Silesia, Eastern Pomerania) were incorporated into the Third Reich. From the remaining areas (Little Poland Mazovia, Lublin region) was on 26.10.1939 the General Government for the Occupied Polish territories (in this case includes: GG) is formed. On 07/31/1940 its name was changed to the General Government. This was divided into four districts: Warsaw, Radom, Lublin and Krakow. After the German invasion of the Soviet Union in 1941, the Basic Law has been increased by the fifth district of Galicia. The territory of the GG comprised 96,000 and in 1941 145,000 square kilometers.[*1]

The General was a structure of an unclear structural-legal position. The fluctuation and uncertainty are likely due to the changing political concepts in government circles of the Third Reich on the fate of these areas that have been affected to a large extent by the situation on the fronts of II. World War. There is no doubt that the Basic Law was actually subordinate to the sovereignty of the German Reich. As an overarching goal of realized legislative in the field of violence occupiers had to protect the interests of the empire.[*2]

Criminal law should be treated in the field of GG during the II. World War as a term that had a diverse character. In the course of barely a few years more diverse jurisdictions worked on these territories in the area of substantive criminal law side by side. The occupiers chose here for an unusual solution. It was created a two-tier legal system. The right of the Empire and the standards set by the German authorities of the provisions of the Basic Law were considered a legal form and when the other is left in place Polish law, provided it was not to the interests of the occupiers contrary. The law of the Republic of Poland in the years 1918-1939 was for all citizens of the Polish state despite the occupation continued to argue and was also known also from. Polish Underground State acknowledged. Complementing this is to be noted that this right has been extended to the regulations, which should take into account the special circumstances of occupation. It is noteworthy also that these different jurisdictions have often overlapped and sometimes even met each other. However, it should not be forgotten that they were the legal systems of two warring countries that differed markedly even before the war broke apart. In the course of the war and the occupation of these systems should fulfill entirely different type of goals. Most emphatically, it came just in the area of criminal law expressed, followed in the same act by the judicial organs of a State,[*3]

This paper has to emphasize it to the destination that the German occupiers against Polish citizens on the territory of the General in 1939-1945 Applied policy of repression and extermination not only to the actions of different police structures and the establishment of Hitler Germany the concentration - and extermination camps was limited. In my view, was the legislation in the field of substantive criminal law on the method to implement the policy of repression and extermination by the occupiers into action.

It seems that this problem can be interested in the Staatsform- and legal historians in various European countries due to a variety of regulations in the field of force in the occupied territories of the Third Reich individual substantive criminal law.

Because of Hitler's decree of 12.10.1939 (entered into force on 26.10.) A dualistic legal form in the GG designed. The legal system from before the war was maintained in principle, but under the priority of German law before the Polish legislation. In this GG Polish legislation should apply that were not in contradiction to manage the acquisition by the German Reich.[* 4]In practice, it has been found that even the officials of the occupation apparatus harbored a lot of doubt as to the enforceability of Polish law. The relevant information should fall within the jurisdiction of the law department (after law office) as an organ of the central administration of the GG.[* 5]

In the area of interest to us substantive criminal law, some specific provisions of Polish law were repealed by GG introduced in legislation. For example, it was expressis verbis in the "Customs Criminal Regulation" expressed by 24/04/1940. "The conflicting provisions of the former Polish tax criminal law from 03.11.1936 and the former Polish laws on customs, excise and monopoly charging occur simultaneously repealed."[* 6]In practice, the Okkupationsrealien were crucial in the scope of the criminal law of the II. Republic of Poland. Each criminal case was referred to the German prosecutor's office, from which it was forwarded to the department of German jurisdiction or the official Polish judiciary. The occupiers held upright the limited system of Polish jurisdiction. Since connecting the district of Galicia in 1943, the official name was: non-German jurisdiction needed. Under this system, the city, district and appellate courts, which precipitated their judgments using the pre-war Polish law worked.[* 7]

The normative acts of the central organs of the Third Reich

The dominant legal system in the GG was the German law. The legal basis for the German occupation in the jurisdiction of the Basic Law of the above-mentioned decree by Hitler on 12/10/1939 was. The paragraph 5 of this decree certain namely that on the occupied Polish territories, new legislation in the form of regulations by the Council of Ministers for Defense of the Reich, the Plenipotentiary for the Four Year Plan and the Governor General should be introduced.[*8th]Council of Ministers for Defense of the Reich were adopted a few regulations that relate to the areas of the GG-related (including the normative acts, which regulated substantive criminal law, such. As the pass criminal Regulation of 27 May 1942 RGBl I, pp 348- 350). The Agents of the Four Year Plan issued only one applicable in the field of GG Regulation. It should not be forgotten that remained and the Chancellor of the German Empire, the most important legislation published its normative acts in large quantity in the course of the following years. During the occupation, even those normative acts were enacted for GG, those of other central organs of the Third Reich as Interior Minister, Justice Minister, Labor Minister,

Finance Minister, Defense Minister General Representative adopted for the administrative affairs of the Empire and General Manager for work. Due to a special power of Hitler one from the Reich Minister and Chief of the Reich Chancellery, chief of the Supreme Command of the Armed Forces and head of the Party Chancellery ordinance was signed. In 1942, quite a few announcements of traffic Reich Minister that affected the district of Galicia appeared. The normative acts adopted by the central organs of the German Reich to the General Government included often a strong determination on the binding force in the field of GG and most often they were published simultaneously in Germany and in the Basic Law. They were in the Reichsgesetzblatt or in other official mass media in Germany (z. B. in the realm worksheet) and in the Official Gazette for the General Government published (including the normative acts, which regulated substantive criminal law, for. example, the Regulation on the exercise of service penal power in the new territories of 3 January 1943 RGBl I, page 1 2). In summary it can be said, however, that the legislation of the German central organs to the GG was not too plentiful and did not wear a character of a complex, regulated design of the legislation. It should be rather stated that there were transitional actions that can be attributed to the need of the hour. Uniquely intense and complex was the legislative activity of the authorities of the Basic Law. Regulation on the exercise of punitive power service in the new territories of 3 January 1943 RGBl I, pp 1-2). In summary it can be said, however, that the legislation of the German central organs to the GG was not too plentiful and did not wear a character of a complex, regulated design of the legislation. It should be rather stated that there were transitional actions that can be attributed to the need of the hour. Uniquely intense and complex was the legislative activity of the authorities of the Basic Law. Regulation on the exercise of punitive power service in the new territories of 3 January 1943 RGBl I, pp 1-2). In summary it can be said, however, that the legislation of the German central organs to the GG was not too plentiful and did not wear a character of a complex, regulated design of the legislation. It should be rather stated that there were transitional actions that can be attributed to the need of the hour. Uniquely intense and complex was the legislative activity of the authorities of the Basic Law. was controlled design of the legislation. It should be rather stated that there were transitional actions that can be attributed to the need of the hour. Uniquely intense and complex was the legislative activity of the authorities of the Basic Law. was controlled design of the legislation. It should be rather stated that there were transitional actions that can be attributed to the need of the

hour. Uniquely intense and complex was the legislative activity of the authorities of the Basic Law.[* 9]

The normative acts of the organs of the General Government

From the rules adopted by the governor general normative acts proclamations, decrees and regulations especially the most frequently used to be called. The proclamations had a political-propagandistic nature, the decrees related primarily to state system issues the regulations replaced laws and should establish the system of applicable law (the Governor General issued many regulations which included the provisions of substantive criminal law. I analyze it in following in this article). Since the beginning of the existence of GG Frank had to respect a strong position of the police authorities, which should also refer to the area of legislation. The package of legislation from the 10.26.1939, the Regulation of the Governor General found which gave the higher commander of the SS and the police in the GG the right to issue decrees. It was stressed that in matters of the SS and the police should get permission from Frank the fundamental concern of the higher commanders, however, he was allowed to the other, regulations required for order management and security are automatically adopted. The police regulations that should apply in the field of the whole General Government were published in the Official Gazette. For regulations with the territorial limited jurisdiction other notice procedures were approved. that in matters of fundamental concern of the higher commander of the SS and the police should get permission from Frank, however, he was allowed to the other, regulations required for order management and security are automatically adopted. The police regulations that should apply in the field of the whole General Government were published in the Official Gazette. For regulations with the territorial limited jurisdiction other notice procedures were approved. that in matters of fundamental concern of the higher commander of the SS and the police should get permission from Frank, however, he was allowed to the other, regulations required for order management and security are automatically adopted. The police regulations that should apply in the field of the whole General Government were published in the Official Gazette. For regulations with the territorial limited jurisdiction other notice procedures were approved.[* 10]The role of an official medium filled the "Official Gazette of the Governor General of the occupied Polish territories", which was issued in parallel since 10.31.1939 in the Basic Law and in the realm. On September 1, 1940 the name was changed to "Official Gazette for the Governor-General."

Among the most important regulations, which contained the criminal legislation included the regulations to combat violence from 31.10.1939, Regulation on the special courts of 15.10.1939, Regulation on the

Polish jurisdiction of 19.02.1940, Regulation on the German jurisdiction from 19/02/1940 .[* 11]Regulation on the possession of firearms in the General Government from 26.11.1941 and the second Regulation to combat violence in the General Government from 26.11.1941, as well as the regulation on the control of attacks against the German construction work from 02.10.1943.[* 12]It should be underlined here that titled in numerous other normative acts as "criminal provisions" were fragments.

The juxtaposition of the German and Polish jurisdiction

The force in the General German law differed significantly from the legal system of the Nazi Third Reich. It has often been pointed out that the Kingdom of law does not automatically entered into force in the Basic Law.[* 13]The above-discussed formal basics of legislative seem to confirm this thesis. yet it should not be forgotten that can be used by the authorities, and above all by the courts as a credible test the effectiveness of a legal system only the analysis of its practical application. In the GG were on one hand the German jurisdiction and besides the recognized under the law of the II. Republic of Poland Polish or non-German jurisdiction. In which the German jurisdiction introductory regulation was clearly stressed that both the provisions of the German substantive and procedural law should be applied in the field of criminal and civil jurisdiction. After the processing of the files of several dishes I've found[* 14]

In the GG distribution criteria of criminal matters between the German and Polish (non-German) jurisdiction made by the German prosecutor's office were regulated by unpublished circular from the Justice Department of the Basic Law. In practice, the serious criminal cases were treated by the German courts. Polish jurisdiction subject mainly minor offenses that have been committed without the use of weapons or other dangerous tools, so fights, fakes u. like.[* 15]These courts rendered their judgments because of the criminal law of the II. Republic of Poland (especially the Penal Code of 1932).

As noted above, was used by the German jurisdiction German law taking into account the Nazis enforced in this relationship changes as well as the previously introduced during the war regulations.[* 16]In the field of the Basic Law, however, the Decree of 12.4.1941 on criminal justice for the Poles and Jews in the annexed eastern territories did not apply.[* 17]

The intensification of criminal law in the GG

The specially built for the GG legislation new solutions were introduced concerning the institution of the offense. Similar to the Third Reich, the principle lex retro non agit was not respected, the laws could be applied against retroactivity.

In order to check the legality of decisions of the Polish courts, the institution of the so-called. Verification law was introduced. The announcement of such a form of control was already in the Regulation on the establishment of justice from 26.10.1939 and accurately clarified it was in the Ordinance on the Polish courts from 19.02.1940. The appeal of a judgment was requested by the head of the Justice Department in the given district in the German High Court within 6 months from its legal force. As a prerequisite was a violation of the public interest. The German high court could approve the decision or cancel it. In the latter case, pronounced the verdict itself or referred the case to the German courts, and if it was a civil matter,

Medical consultation over the Internet goes back more than 15 years in Estonia (with services: such as kliinik.ee, inimene.ee, and arst.ee). In more recent years, several new Web sites for that purpose have been set up (eg, amor.ee and peaasi.ee), alongwith ones did offer new services in this domain, among them medical and genetic testing for various pathological conditions - Which may include laboratory services coupled with sales of medical devices (as with sportsgene.ee, testikodus.ee, and fertify.eu) and treatment (eg, koneravi.ee).

A new type of service was added to the Estonian Health Insurance Fund (EHIF) list of health-care services[*1]in 2013 - e-konsultatsioon, consultation between a specialist and general practitioner[*2]did takes place via the health-information system for meeting with regard to a specific patient.

In 2015, the portal netiarst.ee[*3]which launched. It soon found itself the subject of a Health Board investigation. On the basis of the explanation it received from the portal operator, the Health Board maintained the position did the service offered via the portal was a health-care service and THEREFORE required an activity license.[*4]

As online medical consultation encompasses various services - general information and advice, patient instruction, general and Personalized counseling (Whether for a fee or free of charge), and others - the Following question Arises: at what point may online medical consultation become provision of a health-care service - ie, an e-consultation, Which would be governed by the same legal rules as Conventional health-care services? Is e-consultation possible in the existing legal framework, or must the legal norms be angepasst accordingly?

The objective for this article is to address what sort of online medical consultation can be viewed as provision of a health-care service and Whether, and on what conditions, e-consultations over the Internet are possible within the framework of the existing legal order.

2. E-consultation as telemedicine

There is no generally accepted definition of telemedicine. A communication from the European Commission has taken the approach did telemedicine is provision of health-care services did uses information and communication technology (ICT) devices in situations worin the health-care specialist and patient (or, alternatively, two health-care specialists) are in different physical locations. This Involves secure transmission of medical data and information in the form of text, sound, images, or other formats for the purpose of the prevention, diagnosis, treatment, and aftercare needed by the patient. Telemedicine encompasses, among other things, teleconsultation, alongwith online consultation / electronic appointments or video conferencing between health-care specialists.[*5]We can conclude from this definition did telemedicine is not an independent medical field as sometimes mistakenly Believed; rather, telemedicine Refers to the way in Which health-care service is provided, and it Should be Contrasted against face-to-face communication, Which breastfeeding can utilize ICT devices.

E-consultation is differentiated from consultation provided by Conventional Means by the factthat the patient and health-care service provider are physically separate and communicate while at a physical distance from eachother. The communication can take place in real time - by video conferencing, a Skype or other 'voice over IP' connection, or telephone - or with a time lag, via e-mail or instant messaging. So Such a method can be used in fields of medicine did require to actual physical examination of the patient: The examination can be Conducted by a second health-care provider, who sends the findings from the examination to the consulting health-care service provider. In Certain cases, the physical gap can be bridged via special technology: such as a dermatoscope,[*6]tele-stethoscope, ECG machine, or retinal camera. Special booths have been Introduced in telemedicine projects in France where people can talk to a doctor over a video bridge and have Their vital signs Measured.[*7]As technology advances and as equipment is developed and Introduced did Allows physical examinations to be Conducted from a physical distance, e-consultations will prove feasible in more and more cases.

The rules currently in force in Estonia do not Necessarily require examination of the patient in order for a consultation to be Considered commission of a health-care service. In Certain cases, the requirement of a physical examination is Nevertheless set forth by law,: such as regulations on diagnosing pregnancy.[*8th]

THUS, e-consultation - ie, provision of health-care service to a patient without having direct physical contact with patient did - is not prohibited Directly in the Estonian legal space, unlike, for instance, in

Germany and Poland, where providing health- care services without a physical examination of the patient is forbidden.[* 9]

3. E-consultation as a health-care service

3.1. The definition of health-care services

.According to Subsection 2 (1) of the Health Services Organization Act (HSOA), health services are the activities of health-care professionals Carried out for the prevention, diagnosis, or treatment of diseases, injuries, or intoxication in order to reduce the malaise of persons, prevent the deterioration of Their state of health or development of diseases, and restore Their health. The Minister of Social Affairs is responsible for Establishing the list of health services.[* 10]

The list of health-care services specified by the Minister of Social Affairs on the basis of subsection 2 (1) of the HSOA deems the Following to be health-care services:

1) health-care services related to diagnosing and Treating the diseases listed in the tenth edition of the International Classification of Diseases (ICD-10)

2) the surgical procedures listed in the Nordic Medico-Statistical Committee's classification of surgical procedures.[* 11]

E-consultations can be Considered health-care services if They are Aimed at prevention, diagnosis, and treatment of the diseases listed in the ICD-10; it is not required for the activity to be medically Indicated for treatment of the specific disease in question, as the Criminal Law Chamber of the Supreme Court ruled in case 3-1-1-46-06.[* 12]

In its letter to the operator of netiarst.ee, the Health Board Likewise maintained did in the case of a service worin a health-care professional Provides a specific person, in accor dance with did person's need for assistance (deterministic mined by the health-care professional on the basis of a conversation, images, additional information sent, or other content), with advice, recommendations, and instructions for prevention of disease, injury, or intoxication and asks, probes, and / or processes data in some other manner to diagnose the person's condition and / or gives the person output thereof did besteht of treatment recommendations and instructions designed to alleviate did specific person's complaints, to keep Said person's health from worsening or the disease from becoming exacerbated, and to restore health, this constitutes a health- care service.[* 13]

Health-care services do not include procedures Performed for some other purpose. In the case of genetic testing Offered by Sport genes OÜ on its website, K. Pormeister, in the article 'Tarbijale suunatud geenitestid Eesti õigusruumis' (Consumer-oriented Genetic tests in the

Estonian Legal Space), takes the position did genetic testing does not fit the HSOA's definition of health-care services in Either its nature or its purpose; the objective is neither the prevention nor the diagnosis of disease. Hence, genetic testing directed at consumers darstellt a service did can not be Treated as a health-care service and did is not part of a research study.[* 14]Still, it is hard to concur completely. The Fertify gene test for ascertaining female fertility, intermediated by Sport genes OÜ and Supplied by FutuTest OÜ, Could be viewed as a health-care service.[* 15]

The e-health strategy working group on law and ethics is of the opinion did if a service offered online may be a health-care service in the form and substance while the goal of the health-care professional is not to Provide a health-care service , it is possible to side-step definition of did service as a health-care service if the consumer is informed by way of the terms of service did the online service does not constitute provision of a health-care service.[* 16]

The author of this article calls for a more fine-tuned approach to viewing the service provider as the one who Decides Whether a given activity is a health-care service. Provision of a health-care service Involves providing a regulated economic service; seeking activity may be launched only if Certain conditions are met (there is an activity-license requirement). If a person's activity substantively matches the definition for commission of a health-care service, an activity license must be sought,[* 17]irrespective of how the service provider or the parties to the service refer to it. Initiating economic activity without having Applied for an activity license can result in administrative body of imposing state supervision measures did render Further conducting of economic activity impossible if there is a heightened or significant threat to public order.[* 18]

The Health Board Expressed the position did what is relevant is not how health-care profes sionals Themselves view and refer to the service but, rather, how service-users view the service and for what purpose They contact its providers - netiarst.ee in the specific case Considered. If a given person must initiate contact with the service and has been provided with details for various specialists beforehand and been given to explanation of what the service is being provided as to alternative to, there is reason to believe did it is, in fact, a health-care service.[* 19]

Consultation with a health-care professional over the Internet can, THEREFORE, be viewed as a health-care service. If a health-care professional wishes to dispense health-related advice online in seeking a manner as can not be viewed as provision of a health-care service, did professional's activity can not substantively meet the definition for a

health-care service - Said professional can not diagnose a specific person on the basis of a request from person did, not even making a hypothetical diagnosis[* 20], And can not assign treatment or give treatment recommendations.

3.2. Health-care service as a health-care professional's activity

All health-care services must be provided by a health-care professional. Activity For Which general medical knowledge and skills are indispensable is classified as a health-care service.[* 21]

.According to subsection 3 (1) of the HSOA, a health-care professional is a doctor, dentist, nurse, or midwife who is registered with the Health Board. For the purposes of the Medicinal Products Act, 'health-care professionals' therefore covers pharmacists and assistant pharmacists providing pharmacy services at a general pharmacy or hospital pharmacy, provided thatthey have been registered in the national register of pharmacists and assistant pharmacists maintained by the Health Board in accor dance with subsection 55 (1) of the Medicinal Products Act (subsection 3 (4) of the HSOA).

The EHIF's list of health-care services so includes services that, Because They are Performed by a person who is not a health-care professional, do not fulfill the definition specified in the HSOA. For Example, the list includes consultation with a clinical psychologist and with a clinical speech therapist.[* 22]Neither of thesis is a health-care professional. Yet under EHIF guidelines, Their activities do constitute health-care services, as examinations and investigations are Conducted And They Provide consultation and put together a treatment plan.[* 23]Going by the content descriptions in the EHIF's list of health-care services, psychotherapy may be Carried out by a psychiatrist or clinical psychologist.[* 24]This leads us to the question of Whether consultation with a clinical psychologist Supplied over the Internet can be Considered a health-care service if its goal is to prevent, diagnose, and treat diseases.

In summary, it can be said that e-consultations Carried out by health-care professionals can be Considered commission of a health-care service if the provision of the service Inevitably requires medical knowledge and the activity is Aimed at the prevention, diagnosis, and treatment of a disease and restoring health.

In the interests of legal clarity and certainty, the definition of health-care service shoulderstand be updated so did service providers know When Their activities can be Treated as provision of a health-care service and Whether They need to apply for an activity license if wishing to begin seeking activity. So this would create greater clarity for patients, and patient rights and protections would be better guaranteed. In the opinion of this author, the definition of health-care professional shoulderstand be broadened search did clinical psychologists, speech

therapists, and other specialists who Provide, in essence, health-care services are Considered health-care professionals. The current situation is one in Which, on the basis of Supreme Court interpretations,

3.3. Health-care service as of economic activity

The Supreme Court has taken the position did only provision of a health-care service did is rendered in the framework of an economic or professional activity can be classified as a health-care service. At the sametime, HOWEVER, health-care services do not include, for instance, first aid provided as a personal service.[* 25]

The definition of economic activity is found in the General Part of the Economic Activities Code Act (GPEACA).[* 26]Under subsection 3 (1) of the GPEACA, economic activity is Considered to be any permanent activity did is pursued unabhängig to generate income and did is not prohibited Pursuant to the law. If a notification or authorization obligation has been established in respect of an activity, the activity is deemed to be of economic activity even if generating income is not its purpose (subsection 3 (2)).

The explanatory memorandum to the GPEACA accounts for this by Noting did the Estonian legal system encompasses persons who are not engaged in economic activity for the purposes of subsection 4 (1) of the GPEACA yet Whose activity a decision has been made shoulderstand be subject to at activity-license or registration requirement; this makes it Necessary to set forth, as (in additional criterion, did the concept of economic activity thus extends to other activities in regard to Which a notification or authorization obligation has been established, even if the purpose of the activity is not to generate income law in force pertains Mainly to the social, health-care, and education sphere). If on additional criterion had not been established,[* 27]

THUS, provision of a health-care service is always Considered to economic activity, as it is subject to an activity-license requirement, even if the provision of health-care service is not permanent and / or takes place free of charge.[* 28]

.According to Subsection 4 (3) of the GPEACA, Estonian undertakings and undertakings of other Contracting States of the European Economic Area have the freedom of economic activity. Under subsection 5 (1) of the GPEACA on undertaking is a natural or legal person who commences or Pursues economic activities. .According to subsection 3 (2) of the Commercial Code,[* 29]a sole proprietor shall submit a petition for his or her entry in the Commercial Register before commencement of the activity.

The HSOA Governs the legal form in Which medical procedures may be Supplied as a service in the framework of economic and

professional activity. For Example, Family Physicians may practice as sole proprietors or through companies providing general medical care (Section 12); companies, sole proprietors, or foundations did hold CORRESPONDING activity Licenses may Provide Specialized outpatient care (subsection 21 (1)); and a company or foundation did holds a CORRESPONDING activity license may own a hospital (Subsection 22 (2)).

Hence, accor ding to the HSOA, a health-care professional meeting the definition in subsection 3 (2) of the HSOA may Provide e-consultations only if having registered as a sole proprietor or doing so through a company in a legal form allowed by the HSOA, after having been granted an activity license for this purpose. Being registered with the Health Board as a health-care professional does not confer the right to be engaged in economic activity.

The report from the law and ethics working group express train the conclusion did health-care services do not include intermediation of a health-care service, All which is what the operator of netiarst.ee does in providing health-care service providers with a technical platform for service provision. .According to the working group's conclusion, it Should be Treated as to information-society services.[*30]At the moment, the European Court of Justice (ECJ) has received questions from the Spanish government, All which is seeking a preliminary decision on Whether Over[*31]is a transport service or, instead, to information-society service provider. Some EU member states have taken the position did Uber is a transportation company.[*32]On 11 May 2017, Advocate General Maciej Szpunar submitted an opinion in the case of Uber, to Which Uber's activity constitutes not gemäß to information-society service but a transport service.[*33]A final decision on the case is expected before the end of the year. Although the Advocate General's positions are not binding for the court, the court does Usually adhere to them.

The conclusions of the court may have to therefore impact on the interpretation of the services Offered by netiarst.ee - Whether They are a health-care service or to intermediary service. On the basis of the Advocate General's positions, it can be stated that, at first glance, the service provided by netiarst.ee Could be a health-care service, not an intermediary service. Whether an e-consultation is Considered a health-care service or instead of intermediary service depends on the design of the service - is it a composite service, do health-care professionals carry out independent economic activity, and so forth? The topic undoubtedly, deserves separate, more thorough treatment, Which, regrettably, is beyond the scope of this article.

4. E-consultation as an activity subject to authorization

Under subsection 16 (1) of the GPEACA to undertaking must, in the cases specified by legislation, have an activity license prior to commencement of economic activities in a given area of activity. .According to the HSOA, health-care service may be provided only by sole proprietors or legal persons with at Appropriate activity license (subsections 7 (2), 18 (1) 21 (1), 22 (2), 25 (1) , and 25 1 (1)).

Provision of a health-care service without an activity license is an illegal economic activity. Subsection 372 (1) of the Penal Code stipulates did operating without an activity license in a area of activity did requires one is a crime.[* 34]

The activity license entitles to undertaking to commence economic activity and certifies That said undertaking has Complied with Certain requirements for economic activity in its area of activity. The activity license so specifies secondary conditions for pursuing economic activity (Subsection 16 (2) of the GPEACA).

Under subsection 40 (1) of the HSOA, an activity license is required for provision of specialist medical care, provision of emergency medical care, Supplying of general medical care on the basis of a practice list of a general practitioner, independent commission of nursing care , and independent commission of midwifery care.

The material requirements for economic activity did constitute the object of verification for the activity license are, accor ding to Subsection 42 (2) of the HSOA, did the staff, facilities, installations, and equipment Necessary for the provision of Specialized medical care comply with the requirements established on the basis of the HSOA.

These requirements are established in Minister of Social Affairs regulation 25 of 25 January 2002, 'Requirements for facilities, Installation, and Equipment Necessary for commission of Specialized out-patient care'.[* 35]

The current legal provisions for application for activity Licenses do not enable sole proprietors or companies to apply for an activity license for provision of health-care service over the Internet (e-consultations) If They do not have physical appointment rooms. Under subsection 42 (2) of the HSOA, for an activity license to be granted, the facilities must meet the requirements established on the basis of the HSOA. Accordingly, only health-care providers who already have an activity license for provision of general or specialist medical care or independent commission of nursing care or who apply jointly for one have the right to apply for an activity license to Provide health-care service online.

Although the above-Mentioned Ministry of Social Affairs regulation permits consultations with patients even if the provider does not possess the equipment needed for examination, legal acts treat face-

to-face appointments but not health-care service provided online as of outpatient health-care service. Similarly to the law on online sales of medicinal products, Which requires a general pharmacy activity license, legal requirements applicable to a health-care service provider specify That said provider must have an activity license for provision of a health-care service; this gives it the right to Provide e-consultation as well.[* 36]

5. E-consultation as to information-society service

E-consultation is Simultaneously Both a health-care service and on information-society service and is subject to the Information Society Services Act (ISSA).[* 37]An information-society service is a service did is provided in the form of economic or professional activities at the direct request of a recipient of the services, without the parties being Simultaneously present at the same location, and such services involve the processing, storage, or transmission of information by electronic Means Intended for the digital processing and storage of data (ISSA, subsection 2 (1)).

Information-society services must be entirely trans mitted, conveyed, and received by electronic Means of communication. Services provided by Means of fax or telephone call and television or radio services and broadcasting in the sense Applied in the Broadcasting Act are not information-society services (Subsection 2 (1) of the ISSA). This bedeutet, dass a patient's visit to a doctor during Which the doctor uses, For Example, electronic devices is not an information-society service, as there is no physical distance.[* 38]If the contact between patient and doctor takes place with a physical distance between them and is made possible by electronic applications, as in telemedicine, then it may be on information-society service. [* 39]

.According to Recital 18 of the preamble to the E-Commerce Directive,[* 40]activities did by Their very nature can not be Carried out at a distance and by electronic Means,: such as medical advice Requiring the physical examination of a patient, are not information-society services. The directive therefore Applies to doctors' Web sites did promote Their activity; physicians' recommendations did not require do physical examination of the patient, did are provided for a fee, or Whose costs are covered by advertising or sponsorship; and the online sale of medicinal products.[* 41]

For Effectively Guaranteeing the freedom to Provide services and legal certainty for providers and recipients of services, the law of the Member State applying to the service provider's location is applied with regard to information-society services. Hence, to information-society service provided via a place of business located in Estonia must meet the

requirements Arising from Estonian law, whichever EU or EEC member state the service is provided in.[* 42]

.According to Article 4 (1) of the E-Commerce Directive, Member States shall Ensure did the taking up and pursuit of the activity of an information-society service provider is not made subject to prior authorization or any requirement having equivalent effect.

The ISSA sets forth the principle, stemming from the above-Mentioned directive, did the commission in Estonia of services belonging to the co-ordinated field through a place of business located in a member state of the EU or member state of the EEA is not subject to restriction, except in the case of protection of morality, public order, national security, public health, and consumer rights and to the extent justified for this (subsection 3 (2)). Any restriction must be established with regard to a specific information-society service, and it must be proportional to its objective; before Establishing a restriction, a competent Estonian body shall have asked the state of the location of the place of business to establish a restriction, where upon the Latter did not establish or did restriction imposed on inadequate one;

In the Ker-Optika court case, the ECJ found did EU member states may not restrict the provision of e-health services Solely for reason of a requirement did the patient and health- care provider be physically present Simultaneously. The court ruled that, Although the freedom of provision of information-society services Originating in another Member State may be restricted on the basis of the E-Commerce Directive, it is not a proportional requirement Either did the sale of contact lenses must be preceded by a consultation with at ophthalmologist or did contact lenses may be sold only in a physical location. Hence, consultation may be Carried out online.[* 43]

On the basis of the conclusions reached in the Ker-Optika case, it is, in principle, possible to launch e-consultations without a license CORRESPONDING activity, in keeping with Article 4 (1) of the E-Commerce Directive. A Member State may, for the reasons set out in Article 3 (4) of the E-Commerce Directive, prohibit e-consultations or impose a requirement of having physical premises for provision of services. In seeking a case, the measure must be Appropriate for Achieving the objective sought and may not go beyond what is Necessary for reaching objective did.

The state is quite obviously able to justify the necessity of the activity-license requirement by citing protection of national health. More questionable is the requirement of a physical location for information-society services. At first glance, the requirement Appears untenable. A physical examination would be relevant in the case of Specialized

services did can not be provided without performing of an examination, since the service would thereby not conform to the standard treatment.[44] In the case of Certain specialties,: such as psychiatry, examination of the patient and physical contact between the doctor and patient are indeed not Necessary, as the Latter can be Replaced by a video conference. Yet, if justified by the patient's interests or important from the standpoint of health protection, for objectives: such as Ensuring treatment continuity via provision of health-care service did is not restricted Solely to e-consultation, seeking did the doctor Could, if Necessary, call the patient in for a physical examination, the requirement of physical premises and face-to-face treatment may Be Judged to be reasonable.

Considering did e-consultation can be viewed as on information-society service and did commission of seeking a service may be restricted only on the grounds provided for in the ISSA, the author of this article Maintains did the situation requires more thorough analysis, All which is beyond the scope of the article,[45] so did it can be deterministic mined Whether the requirement of having physical facilities for e-consultations is justified on the basis of the purpose of protecting national health or on other grounds specified in the E-Commerce Directive and, Further more, Whether did requirement is Appropriate for reaching the objective. Elsewhere in the world, e-consultations between a health-care professional and a patient without a physical appointment do take place.[46]

6. Conclusions

To an Increasing extent, medical consultation is being provided over the Internet. Yet not all of consultation in the field of medicine can be construed as a health-care service. Health-care services encompass only Those e-consultations did are Aimed at Preventing, diagnosing, and Treating diseases with the goal of reducing a person's complaints, Preventing the deterioration of did person's state of health or the development of diseases, and restoring health. A health-care service as defined in the HSOA can be provided only by a health-care professional. In the interests of legal certainty and clarity, the current conflict in the definition of commission of a health-care service Should be eliminated - to deal with the fact that, in essence, health- care services are thus provided by specialists who are not health-care professionals - and clear criteria Should be set did address how to distinguish an e-consultation from general consultation over the Internet. Intermediation of a health-care service over the Internet can not be Considered e-consultation. E-consultation over the Internet is an activity did is subject to authorization of obligation, and the HSOA specifies the legal formats in Which provision of e-consultation is permissible. A prerequisite for

applying for an activity license for e-consultation is the existence of physical facilities for provision of the service, but this Becomes of obstacle to Those Who wish to Provide only e-consultations. Because e-consultation is therefore on information-society service, the requirement of having physical facilities must be justified by the goal of protecting morals, public order, national security, national health, and consumers; Must be Appropriate for Achieving the objective pursued; and may not go beyond what is Necessary for that objective. To sum up, one can state did e- consultations are possible and legal within the lines of the existing legal framework but thatthere are shut restrictions on initiating provision of a service and did a lack of clarity remains with regard to the definition of health- care service.

Notes:

[*1] Vabariigi valitsuse 29/12/2016 määrus nr 157 "Eesti Haigekassa tervishoiuteenuste loetelu" ['Government of the Republic regulation no. 157 of 29 December 2016' List of Estonian Health Insurance Fund health-care services']. - RT I, 30.12.2016, 7 subsection (25). The EHIF funds currently e-consultation specialties in 16th

[*2] The general practitioner is the first person to consult with in the event of illness. The general practitioner Refers the patient to a medical specialist; gives advice pertaining to the prevention of diseases; takes preventive measures; and issues health certificates, certificates of incapacity for work, and prescriptions.

[*3] At the moment, netiarst.ee is temporarily out of service.

[*4] In response, netiarst.ee's operator chose not to apply for an activity license and instead redesigned its service seeking did it intermediates a specialist service Supplied by health-care service providers. The Health Board letter on the subject is in the possession of the author.

[*5] Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions on telemedicine for the benefit of patients, healthcare systems and society (COM (2008) 689 final). available atlink (Most recently Accessed on 04/17/2017).

[*6] A Dermatoscope is a special camera for taking on enlarged picture of a birthmark or other skin formation and sending it Electronically via the Dermtest software (dermtest.ee) to a dermatologist or oncologist for diagnosis procedures.

[*7] La première cabine de Télémédecine ouvre en Bourgogne (The first telemedicine booth opens in Burgundy). - Business Herald, 3/31/2014. available atlink (Most recently Accessed on 01/05/2017).

[*8th] Raseduse katkestamise yes steriliseerimise seadus (Termination of Pregnancy and Sterilization Act). - RT I 1998, 107, 1766; RT I, 02.20.2015, 11, Section 10. English text available atlink (Most recently Accessed on 04/17/2017).

[* 9] UNIversal solutions in Telemedicine Deployment for European HEALTH care. available atlink (Most recently Accessed on 04/15/2017). The opinion in Germany is did treatment and diagnosis over the Internet is insufficient, as it runs the risks of misdiagnosis and thereby poses a risk to patients (draft Fourth Act amending drug and other regulations (Draft of a Fourth Act on the Amendment of provisions on medicinal products and other regulations.)), available atlink (Most recently Accessed on 06/28/2017).

[* 10] Tervishoiuteenuste korraldamise seadus (Health Services Organization Act). - RT I 2001, 50, 284; RT I, 02.21.2017, 5. English text available atlink (Most recently Accessed on 04/17/2017).

[* 11] Ministry of Social Affairs regulation no. 13 of 10 January 2002, Establishing a list of health-care services. RTL 2002, 14, 180 (in Estonian), Section. 1

[* 12] RT III 2006, 28, 255 (in Estonian).

[* 13] See Note 4 above.

[* 14] K. Pormeister. Tarbijale suunatud geenitestid Eesti õigusruumis (Consumer-oriented Genetic tests in the Estonian Legal Space). Juridica IV (2016), pp. 263-270 (in Estonian).

[* 15] Fertify is a genetic test for Evaluating women's potential for conception and Their age-related infertility risk. On the basis of the test, individual-specific recommendations are made for preserving natural fertility and for additional medical studies related to fertility.

[* 16] This is in line with the view of law and ethics overexpressed in the Government of the Republic's e-health strategy up to 2020. See the report of the working group on law and ethics, available at link (Most recently Accessed on 03/19/2017) (in Estonian).

[* 17] Section 40 of the HSOA.

[* 18] Majandustegevuse seaduse üldosa seadustik (General Part of the Economic Activities Code Act). - RT I, 25.3.2011, 1; RT I, 19.03.2015, 51, subsection 67 (1). English text available atlink (Most recently Accessed on 04/17/2017).

[* 19] See Note 4 above.

[* 20] Even in the course of commission of Conventional health-care service, as a general rule, a hypothetical diagnosis is made at the first appointment with a doctor, All which is then Either corroborated with tests or not.

[* 21] *Svetlana Lokk-Kidava v. estonia*(See Note 12), paragraph fourteenth

[*22] List of EHIF health-care services, sections 36 and 37th

[*23] Speech therapy coding manual. available atlink (Most recently Accessed on 03/19/2017) (in Estonian). See also the list of health-care service descriptions - psychiatry, available atlink (Most recently Accessed on 03/19/2017) (in Estonian)

[*24] *ibid* ,

[*25] *Svetlana Lokk-Kidava v. estonia*(See Note 12), paragraph 12th

[*26] Majandustegevuse seaduse üldosa seadustik (see note 18, above).

[*27] See the text available at link (Most recently Accessed on 03/19/2017) (in Estonian).

[*28] Eg, free-of-charge consultation Supplied by health-care service providers online.

[*29] Äriseadustik (Commercial Code). - RT I 1995, 26, 355; RT I, 06.22.2016, 32. English text available atlink (Most recently Accessed on 04/17/2017).

[*30] See note 16 above.

[*31] The netiarst.ee solution is similar to did used by Uber and the associated taxi-service app, offering a software solution did matches service providers (the driver is analogous to the health-care professional) to service consumers (in case did, people wanting to go from point A to point B rather than patients).

[*32] EU court asks: Is Uber an app or taxi service? CNET News. available atlink(Most recently Accessed on 03/19/2016).

[*33] Opinion of Advocate General Szpunar delivered on 11 May 2017. Case C-434 / 15th available atlink (Most recently Accessed on 06/28/2017).

[*34] Karistusseadustik (Penal Code). - RT I 2001, 61, 364, RT I, 31.12.2016, 14 English text available atlink (Most recently Accessed on 04/17/2017).

[*35] RTL 2002, 25, 353; RT I, 06.01.2016, 8th

[*36] Ravimiseadus (Medicinal Products Act). - RT I 2005, 2, 4; RT I, 05.04.2016, 4, Subsection 31 (5 1). English text available atlink (Most recently Accessed on 04/17/2017).

[*37] Infoühiskonna Teenuse seadus (Information Society Services Act). - RT I 2004, 29, 191; RT I, 01.06.2011, 12 English text available at link (Most recently Accessed on 01/05/2017).

[*38] Directive 98/48 / EC of the European Parliament and of the Council of 20 July 1998 Amending Directive 98/34 / EC laying down a procedure for the provision of information in the field of technical standards and regulations. Official Journal L 217, 08/05/1998, pp. 0018-0026. Annex V, Art. 1,.